

HEARING SUMMARY FORM

#0329-16

Hearing: Tuesday, October 4, 2016
Date

1800 hrs.
Time

Raines Station Conference Room
Location

Attended by: PII Kristian Marzette #13120 / PII Michael Williams #5702 / Lt. Byron Hardaway #3286

Hearing Officer: Colonel Michael R. Williams #9486

Statement of Hearing Officer: On Thursday, September 1, 2016, at 5:40pm, an administrative hearing was held in the Raines Station Conference Room at 791 E. Raines. Present at this hearing were Colonel Michael R. Williams #9486 (Hearing Officer), Officer Kristian Marzette #13120 (Charged Officer), Officer Michael Williams #5702 (MPA Representative), and Lt. Byron Hardaway #3286 (Raines C-shift Supervisor). Officer Marzette was charged with DR 301 – EXCESSIVE/UNNECESSARY FORCE and DR 104 – PERSONAL CONDUCT. The statement of particulars from SOC# 0329-16 was formally read out loud to begin the hearing. It is alleged that on Saturday, March 5, 2016, Officer Marzette instigated a confrontation with a female citizen (complainant) who had arrived at 4266 Elvis Presley Blvd., where officers were handling a “Found Child” complaint. When the citizen became upset with Officer Marzette’s behavior, it is alleged that Officer Marzette used excessive and/or unnecessary force in response to the citizen’s actions.

(continued on the back)

Action Ordered: DR 301 - EXCESSIVE/UNNECESSARY FORCE: SUSTAINED - THREE (3) DAY SUSPENSION
DR 104 - PERSONAL CONDUCT: SUSTAINED - FIVE (5) DAY SUSPENSION

Ced. M. R. Wen 9486
Hearing Officer

Any employee holding a position not exempted from the provisions of Article 34 Civil Service, and not in the initial probationary period, who has been suspended in excess of ten, (10) days, terminated, or demoted, may appeal to the Civil Service Commission within ten, (10) calendar days after notification in writing of such action. In the event of multiple suspensions, only that suspension which causes the total number of days suspended to exceed five, (5) days within a six month period, and any subsequent suspension within said period shall be appeal able to the Commission. If the disciplinary action is 10 days or less, the officer may submit to a grievance procedure or an internal appeal, but not to both.

In addition Chapter I Section 5 page 4 states in part: "Commissioned police officers with a status of suspension, probation, non-enforcement, relieved of duty, or leave of absence are not permitted to engage in any Secondary Employment and/or any Off Duty Security Employment where the officer's status is dependant on his/her state commissioned status. No commissioned police officer is permitted to engage in any Secondary Employment and/or Off duty Security Employment for a period of thirty (30) days after the final disposition of (1) any sustained Statement of Charges for violation of the Sick Abuse policy or (2) any sustained Statement of Charges resulting in a suspension and/or reduction in rank" Notification will be made to the Secondary Employment Office regarding this suspension. Violation of the above listed policy could result in additional charges.

Appeal: Will LM Will Not Be Filed

Grievance: Will Will Not Be Filed

I understand that by requesting the grievance procedure that I am waiving my right to recourse through the Internal or Civil Service Commission Appeal Process.

10/04/2016
Date

Kristen Mayhew
Employee Signature

Statement of Hearing Officer (continued)

Hearing Officer that Officer Marzette allowed her personal emotions and judgement to influence her actions, which escalated into a verbal and physical confrontation with the complainant. I do not find credibility with Officer Marzette's comment that her "unintentional" act of pulling the complainant's hair should "not have set her off." The complainant's back was to Officer Marzette when Officer Marzette approached her from behind, because the complainant was hurriedly walking into the business to see about the child and ignoring Officer Marzette. Therefore, the complainant had no way of knowing whether Officer Marzette had pulled her hair intentionally or not. Furthermore, while inside of the business, the complainant verbally threatened Officer Marzette with bodily harm and Officer Marzette responded with physical force, which the Hearing Officer deems to have been unnecessary. The complainant would not have been irritated and enraged with Officer Marzette had it not been for Officer Marzette's unprovoked and unnecessary actions outside the business when the complainant first pulled up. Witness officers, along with the complainant's boyfriend, acted swiftly to defuse the situation by restraining and separating Officer Marzette and the complainant. Also, the statements of those witness officers and civilians who were present support the fact that Officer Marzette's actions, although deemed not to be excessive, were unprovoked and unnecessary, and they described Officer Marzette as having been the primary aggressor during this unnecessary encounter.

Taking the totality of the circumstances into account, and bearing in mind that Officer Marzette has no previous violations listed on his disciplinary chart, both charges were *SUSTAINED*. Officer Marzette was ordered to serve a three (3) day suspension for the sustained charge of DR 301 - Excessive/Unnecessary Force, and a five (5) day suspension for the sustained charge of DR 104 - Personal Conduct. These eight (8) suspension days were ordered to be served immediately (October 5-14, 2016, around her RDOs of October 8-9, 2016).

City of Memphis
Police Division
Inspectional Services Bureau

Administrative Summons

Memphis Police Department VS.
Marzette, Kristian IBM: 13120

Date: April 22, 2016
ISB Case #: I2016-007

I. Allegation

It is alleged that you used excessive and unnecessary force against the complainant while responding to an 'unattended child' call on March 5, 2016, at 4266 Elvis Presley Boulevard.

II. Rules, regulations or orders violated.

DR 301 Excessive/Unnecessary Force
DR 104 Personal Conduct

III. Hearing

Date: 09/01/2016
Place: 191 E. Raines
Time: 1730 hours

You are entitled to representation during this hearing.

Served by:

St. R. Robinson #6449
Name/Rank/Assignment/IBM

Date:

09/01/2016

Time:

1730 hours

Signature of Officer:

Kristian Marzette #13120

YOUR ATTENDANCE AT THE HEARING NOTICED HEREIN IS REQUIRED, UNLESS EXCUSED DUE TO A MEDICAL EMERGENCY. FAILURE TO ATTEND WILL BE CONSTRUED BY THE HEARING OFFICER AS A WAIVER OF YOUR RIGHT TO BE HEARD. ATTENDANCE WILL BE EXCUSED DUE TO A MEDICAL EMERGENCY IN THE SOLE DISCRETION OF THE HEARING OFFICER, AND ONLY IF YOU HAVE DELIVERED, OR CAUSED TO BE DELIVERED, TO THE HEARING OFFICER, PRIOR TO THE HEARING DATE, A WRITTEN STATEMENT OF MEDICAL CONDITION, PREPARED AND SIGNED BY THE YOUR TREATING PHYSICIAN, DESCRIBING YOUR MEDICAL CONDITION AND ADVISING THAT YOU ARE NOT ABLE TO ATTEND THE HEARING AS A RESULT OF SAID CONDITION.

10/13/14
IAB

03-24-16
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**City of Memphis
Police Division
Inspectional Services Bureau**

Case # I2016-007 Statement of Charges

Officer's Name: Marzette, Kristian

IBM # 13120

Rank: POLICE OFFICER II/PROB

Assignment: Raines Station - "C"

Date: April 22, 2016

Notice is hereby given that you are being charged with violation(s) of policy, law or regulations as shown below:

DR 301 Excessive/Unnecessary Force - *SUSTAINED (3 day swap)*
DR 104 Personal Conduct - *SUSTAINED (5 day swap)*

Date of Occurrence: March 5, 2016

Statement of Particulars:

The result of this investigation shows that you did use physical force against the complainant during a routine call for service. The force used occurred during a heated altercation between you and the complainant regarding the welfare of a child.

The investigation revealed that you allowed your personal emotions and judgement to influence your actions which escalated into a verbal and physical confrontation with the complainant. The complainant verbally threatened you with bodily harm and you responded with the use of physical force.

Witness officers, along with the complainant's boyfriend, acted swiftly to defuse the situation by restraining and separating both you and the complainant. Furthermore, officer and civilian witness statements support that your actions, although deemed not to be excessive, were unprovoked and unnecessary. You were described to be the primary aggressor.

From the evidence obtained as a result of this investigation, there is evidence to prove the allegation of the Memphis Police Department's DR 301 Excessive Force/Unnecessary Force states:

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

Graham v. Connor (US 1989) is the landmark US Supreme Court case that defines reasonable use of force by police officers in the line of duty. As such, this standard was applied in defining the Memphis Police Department's use of force policies, which are contained in the Memphis Police Department Policies and Procedures Manual, Chapter 2, Section 8, Response to Resistance, pages 1-11.

The ruling in **Graham V. Connor** holds that all claims that law enforcement officials had used excessive force --deadly or not-- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen, are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.

The "reasonableness" of a particular use of force must be judged from the perspective of a **reasonable officer on the scene**, rather than with the "20/20 vision of hindsight."

The test of reasonableness is **not capable of precise definition or mechanical application**. Its proper application requires careful attention to the facts and circumstances of each particular case, including:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of the officers or others; and
3. Whether he/she is actively resisting arrest or attempting to evade arrest by flight.

This "objective reasonableness" standard was applied during the investigation of the 'Found Child Complaint' by you at 4266 Elvis Presley Boulevard. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by you, and revealed the following:

1. The crime at issue in this investigation is the fact there was no crime committed.

2. The complainant did pose an immediate threat to the safety of you by actively engaging you with her arms raised and fists closed. Furthermore, the complainant verbally threatened to kill you. The complainant's aggressive actions of hostility towards you also posed an immediate threat to the safety of other assisting officers, as well as other surrounding bystanders. Those officers were forced to use physical force to restrain the complainant from inflicting bodily harm upon you and potentially others.
However, the actions of the complainant more than likely would not have occurred if you had not pulled the complainant's wig from her head. The action of you pulling the complainant's hair was unprovoked and unwarranted. Your actions resulted in a defensive reaction by the complainant.
3. By threatening the use of bodily force and threatening to kill you, the complainant was an active threat to the officer.

You confronted the complainant while not maintaining control of your emotions. Your action of pulling the complainant's hair was unprovoked and unwarranted. Although you stated your action was unintentional, that one action alone precipitated unwarranted acts of aggression by both parties. The aggression culminated into a physical confrontation that had no relevance whatsoever to the dispatched call.

Witness officers, as well as civilian witnesses, concurred that you initiated the confrontation and described your actions as being out of control. There was the only officer that described you as not being the primary aggressor. The complainant appeared to have initiated the altercation inside the restaurant. At the moment the complainant was restrained, you should have backed away.

You are required to have the stamina, intelligence, moral courage and emotional stability necessary to fairly and impartially deal with human beings in the many complicated and potentially explosive situations, which you encounter.

You are also required to maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others.

The public demands that your integrity be above reproach. A member must scrupulously avoid any conduct, which might compromise the integrity of themselves, their fellow members or the Department.

You are the most conspicuous representative of government, and to the majority of the people you are a symbol of stability and authority upon whom they can rely. Your conduct is closely scrutinized, and when your actions are found to be excessive, unwarranted or unjustified, you and the Department are criticized far more severely than comparable conduct of persons in other walks of life. Since your conduct, on or off duty, does reflect directly upon the Department, you must at all times conduct

yourself in a manner which does not bring discredit to yourself, the Department, or the City.

From the evidence obtained as a result of this investigation, there is evidence to prove the allegation of the Memphis Police Department's DR 104 Personal Conduct, which states:

The Memphis Police Department's DR 104 Personal Conduct states:

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

(The officer's disciplinary resume will be reviewed and become a part of this file)

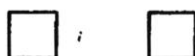
Lt. R. Robinson #0497
Issuing Officer

J. B. Cobb #1567
Charging Officer

I acknowledge receipt of this notice and understand that further investigation may result in additional charges, amendment of the above charges, or dismissal of these charges.

I further understand that a written response to these charges at this time is at my discretion unless specifically instructed to file same by the issuing officer.

Kristen Magath #13120
Signature of Officer:



Written Response Ordered? Yes No

Was officer relieved of duty? ☐ Yes ☐ No

Reviewed by: ☒ ^{6/23/16} Dep. Dir. ☐ Dep. Chief ☐ Work Station Commander

Delegated to: ☐ Dep. Chief ☒ Station/Bureau

Col. M.R. Williams 9486
Major/Lt. Colonel/Colonel

MICKEY WILLIAMS

City of Memphis
Police Division, Inspectional Services Bureau
Case Summary I2016-007

Printed On: 6/25/2020

I) Principal Officer:

POLICE OFFICER II/PROB Kristian Marzette, IBM #13120

Raines Station - "C"

II) Administrative Regulation:

DR 301 Excessive Force/Unnecessary Force
DR104 Personal Conduct

III) Allegation:

It is alleged that Officer Kristian Marzette used excessive and unnecessary force against Ariana Carter while responding to an 'unattended child' call on March 5, 2016, at 4266 Elvis Presley Boulevard.

IV) Background:

On March 5, 2016, at approximately 8:00 p.m., Officers Jaboa Ollie, Kristian Marzette, Matthew Chaney, and Wayne French, responded to a call to 4266 Elvis Presley Boulevard (Burger King Restaurant) regarding an unsupervised three year old child found wandering across Elvis Presley Boulevard.

Ariana Carter, the child's sister, later arrived on the scene accompanied by her boyfriend, Stefone Austin. Officer Marzette exited the restaurant and verbally confronted Ms. Carter regarding the child. Ms. Carter was not receptive to Officer Marzette's manner or tone of voice. As Ms. Carter entered the restaurant, Officer Marzette initiated physical contact with Ms. Carter to slow her haste.

Officer Marzette's physical contact with Ms. Carter rapidly led to a verbal altercation which escalated into a physical confrontation inside the restaurant. Officers Ollie, Chaney, and French were forced to physically intervene to separate and deescalate the confrontation. As a result of the altercation, Ms. Carter was struck in the face several times by Officer Marzette and was eventually issued a Misdemeanor Citation for disorderly conduct.

V) CAD #:

CAD #P160652425

VI) Evidentiary Findings:

A) Statements:

Civilian Complainant Statement: Ariana Carter stated she initially received a call from her sister stating their baby sister (3 years old) was missing. She and her boyfriend, Stefone Austin, began checking the area. As they arrived at the Burger King, Officer Marzette exited the restaurant and asked Ariana, "Is this your child?" Ms. Carter responded by saying it was her little sister. Officer Marzette replied, "Get your ass out the car," and asked her if she was aware of how long her sister had been there.

As Ms. Carter exited the car, Officer Marzette said something to her, but Ms. Carter ignored her and walked away. Ms. Carter stated she did not respond to Officer Marzette because she did not want a conflict or argument. Ms. Carter walked past Officer Marzette and entered the restaurant. Before Ms. Carter opened the door, Officer Marzette pulled her by her hair (wig) which became partially detached from her head; the wig was attached by cosmetic glue. Officer Chaney was outside with Officer Marzette at the time of the initial confrontation.

ISB investigators asked Ms. Carter why she did not respond to Officer Marzette's questions. Ms. Carter's response was that it was her intention to get her little sister and leave. She did not feel that the incident involving her little sister was such a big concern.

Once inside, Ms. Carter's demeanor escalated. As she thought more and more about Officer Marzette pulling her hair, she became progressively angry and upset. Ms. Carter stated at that point she raised her hand and pointed at Officer Marzette. She told Officer Marzette, "You didn't have a right to put your hands on me. If I didn't put my hands on you, you shouldn't have put your hands on me."

When Ms. Carter first raised her arms, her hands were initially open. As she became more upset, she closed her hands into a fist out of frustration. Officer Marzette at first just stood there, and the next thing she knew Officer Marzette walked up and began hitting her in her face. The other officers began pulling Ms. Carter back as Officer Marzette continued to strike at her.

Officer Marzette struck Ms. Carter in the face three or four times with her fist, striking her underneath her right eye. Ms. Carter further stated to Officer Marzette, "I'm going to kill you. You had no right to put your hands on me. You touched me, I didn't touch you." Ms. Carter stated that particular comment made was after Officer Marzette pulled her hair, and before Officer Marzette struck her in the face.

ISB investigators asked Ms. Carter if the other officers were intentionally holding her so that Officer Marzette could strike her. Ms. Carter's response was, "I would say they was intentionally holding me to keep me from swinging at her (Officer Marzette)."

Ms. Carter angrily questioned Officer Marzette as to why she had pulled her hair. She told Officer Marzette that if she had just called for her to come pick up her baby sister,

then everything could have been prevented. Ms. Carter's intention was to voice to Officer Marzette, "Don't touch me. If I didn't touch you, don't touch me. You're out of line because you touched me first."

Ms. Carter explained at the time of the altercation inside the restaurant, she was far enough away from Officer Marzette that she was not violating the officer's 'personal space,' and would not have been able to reach her. Ms. Carter was not struck by anyone else and the officers were only physically holding her back in order to defuse the situation.

Ms. Carter did not hear any of the officers issue any verbal commands other than to calm down. Ms. Carter replied to ISB investigators, "How could you calm down when somebody struck you that you did not touch or do anything to." Her boyfriend, Stefone Austin, also assisted in restraining her. It was only after Mr. Austin pulled her aside, Ms. Carter began to calm down.

As a result of the physical altercation, Ms. Carter sustained a small scar on her forehead from where her hairpiece became detached from the scalp. She also received some soreness underneath her right eye. She did not seek medical treatment for her injuries. Ms. Carter believed there were at least five employees inside the restaurant that witnessed the incident. Two of the employees' may have recorded the incident with their cell phone. Two sergeants made the scene and she advised them of what had occurred. Ms. Carter was issued a Misdemeanor Citation.

Civilian Witness Statement: Stefone Austin stated he and Ariana Carter went looking for her little sister who had walked away from the house. After checking several area businesses, they stopped at the Burger King at 4266 Elvis Presley.

Mr. Austin observed Ariana's three year old sister sitting inside the lobby with several MPD officers. A female officer (Officer Marzette), and a male officer (Officer Chaney), exited the restaurant. Officer Marzette approached their car and asked, "Is this your child?" Ariana advised her that the child was her little sister and that's when Officer Marzette said, "Get your ass out the car and come get your little sister." Ariana exited the car without responding to Officer Marzette. The two of them exchanged words outside of the restaurant, but he did not recall their exact words.

Mr. Austin believed that Ariana was paying attention to what Officer Marzette was saying. However, it appeared to him that Ariana was more concerned for her sister's welfare.

As Ariana was entering the restaurant, Mr. Austin was standing next to his car and was approximately three feet from the lobby door; Officer Marzette was standing beside Ariana. Ariana was wearing a shoulder length hair weave. Mr. Austin witnessed Officer Marzette grab Ariana by the back of her hair using her left hand. He then witnessed Officer Marzette force Ariana through the doorway while holding her by her hair. As they entered the doorway, Officer Marzette pulled the hairpiece completely off of

Ariana's head and it ended up on the floor. Mr. Austin followed them inside. Mr. Austin believed Ariana was unaware that it had become detached from her head.

Ariana turned around and stated to Officer Marzette, "Don't put your hands on me if I didn't put my hands on you." Mr. Austin was fairly certain that Ariana was cursing Officer Marzette at the time, but he could not recall specific words.

Once inside the restaurant, Officer Marzette passed in front of Ariana. Ariana approached her little sister at which time Officer Marzette ran in front of Ariana and swung at her. He described Officer Marzette's swinging motions as 'jabs to the face.' Officer Marzette struck Ariana twice. Ariana never made physical contact with Officer Marzette. Ariana did not ball her fists up at Officer Marzette nor did she walk towards the officer with a clinched fist.

Ariana began yelling and screaming at Officer Marzette once the officer struck her in the face. All of the officers then stood between Ariana and Officer Marzette; three of the officers grabbed Ariana. A male white officer grabbed Ariana around her neck and chest area; she continued to struggle. A female black officer restrained Ariana by the arm. Another male officer assisted restraining Officer Marzette and prevented her from advancing towards Ariana.

Mr. Austin grabbed Ariana and pulled her away. He advised the officers that he had control of Ariana and that they could release her. At that point, the officer (Officer French) holding Ariana around the neck released her. After that, no other persons had any physical contact with Ariana. A supervisor arrived on the scene and Mr. Austin explained to him what he witnessed. The supervisor questioned his credibility because of his relationship to Ariana.

Mr. Austin observed three employees inside the restaurant at the time of the incident. He believed a female employee standing near the cash register may have recorded the incident on her cell phone, but he wasn't certain. Ariana was not injured during the altercation and she did not seek medical attention after the incident.

Civilian Witness Statement: N'Kela Caradine, the manager for the Burger King, stated a child was located across the street and was brought inside the restaurant. Two female MPD officers arrived on the scene and sat in the dining room waiting with the child. Ms. Caradine described the first female officer as dark skinned female black wearing a ponytail. The other was light skinned female black with her hair in a 'wrap'. She described the officer involved in the altercation as the dark skinned officer wearing the ponytail.

Ms. Caradine was standing inside the lobby area next to the drink machines. She stated that as Ms. Carter walked inside, she was irate; calling the two officers "bitches and hoes." She told one officer, "Bitch you know whose baby this is?" The officer asked her whose baby it was and Ms. Carter stated, "It's my sister." Ms. Caradine, by the tone of their conversation, initially believed the female officers and Ms. Carter were sisters.

As Ms. Carter continued her anger, Officer Ollie spoke up and asked her to calm down. Ms. Carter replied, "I'm not fixin to mother-fucking calm down! This bitch got me fucked up!" Ms. Carter was 'calling out' the officer (Officer Marzette) as if she knew the officer. As the incident was taking place, Ms. Caradine was approximately five to six feet away from the altercation and there were no obstructions blocking her view.

Other officers were restraining Ms. Carter, and attempted to calm her down. She described the officers as being two female blacks and a dark skinned heavy set male black, approximately 350 to 360 lbs. No one was restraining Officer Marzette. Ms. Caradine stated the heavy set officer commented that he was not going to lose his job over the actions of the female officer (Officer Marzette).

Officer Marzette approached Ms. Carter as if to physically strike her. Ms. Carter told Officer Marzette, "I wish you would hit me." Officer Marzette then struck Ms. Carter once in the face as the other officers were holding Ms. Carter's arms down to her side and towards her back. Ms. Caradine later stated Officer Marzette struck Ms. Carter twice in the face with her fist and then struck her several more times as Ms. Carter's back was turned.

Ms. Carter attempted to strike back at Officer Marzette, but she was unable to do so because she was being restrained by the other officers. Officer Marzette approached Ms. Carter a second time and struck her again. As Ms. Carter attempted to break free, the officers turned her away from the direction of Officer Marzette. Officer Marzette continued to strike Ms. Carter in the area of her back and side.

The officers continuously advised Ms. Carter to calm down, but they said nothing to Officer Marzette. Ms. Carter told the officers, "I'm not fixin to calm down cause y'all let this lady hit me."

Ms. Caradine stated Ms. Carter did not strike Officer Marzette. She did not observe Officer Marzette pull Ms. Carter's hair. After the altercation was over, the officers lead Ms. Carter outside of the restaurant where she continued to be irate and was banging on the window. Ms. Carter was not handcuffed or detained, but Officer Marzette was placed in the back of a squad car. There were other employee's inside the restaurant at the time of the incident, but Ms. Caradine was unaware if any of them witnessed the incident.

The only person on the scene that was related to Ms. Carter was her boyfriend, Mr. Austin, but he never entered the restaurant. The supervisor, Sgt. Lorenzo Young, requested to view the video surveillance tape, but Ms. Caradine advised the equipment was not working properly. None of the officers asked her if she witnessed the incident, but they did question an employee named Dana. She also believed an employee named Derick Kuykindall witnessed the incident.

Civilian Witness Statement: Cedric Henderson stated he was working in the restaurant's kitchen when he heard yelling coming from the lobby area. Initially, his

view was obstructed by equipment inside the restaurant. He was standing 15 to 20 feet from the incident. He observed the complainant (Ms. Carter) waving her hands close the lady officer's (Officer Marzette) face. Ms. Carter's palms were open.

Officer Marzette was not aggressive. She advised Ms. Carter several times to put her hands down, but Ms. Carter refused. Officer Marzette's actions then became more aggressive or defensive. A male officer then grabbed Ms. Carter to restrain her. The officer placed her arms behind her back, but he did not handcuff her. At that moment Officer Marzette began punching Ms. Carter in the face; three to five times. The male officer continued to pull Ms. Carter away to separate the two. A male (Stefone Austin), who had just entered the restaurant, assisted in restraining Ms. Carter. The altercation was also 'verbally heated,' but Mr. Henderson could not determine what was being said. Ms. Carter was doing most of the arguing.

Ms. Carter did not strike Officer Marzette nor was Ms. Carter struck by any other officer. The physical altercation lasted forty-five seconds to a minute. Officer Marzette went outside after the physical altercation. Mr. Henderson only witnessed what occurred inside. He advised no one asked him if he witnessed the incident. He did not record the incident on his cell phone and was unaware if anyone else had done so.

Civilian Witness Statement: Dana Johnson stated she was working at the front cash register on the night of the incident when she observed two MPD officers bring a small child inside the restaurant. One officer was a male black and the other was a female black.

A female (Ms. Carter) entered the restaurant followed by another female officer (Officer Marzette). Officer Marzette approached Ms. Carter and began touching and talking to her in a 'crazy' manner. Ms. Carter told Officer Marzette, "Don't touch me. I didn't touch you. I didn't say anything to you."

At that moment, Ms. Johnson observed a male officer and another female officer (Officer Ollie) restraining Ms. Carter. They were holding her arms down to her side and towards her back. As they were pulling Ms. Carter away, Officer Marzette approached Ms. Carter and punched her in her face approximately seven times. Ms. Carter was unable to fight back.

Officer Ollie told Officer Marzette to move away. After the altercation was over, Ms. Johnson went to the back of the restaurant to continue her duties. The altercation lasted approximately two minutes.

Ms. Johnson did not observe Officer Marzette being placed in the back of a squad car. She did observe Ms. Carter sitting in her car after the incident was over. Ms. Johnson stated a heavy set officer (Sgt. Young) arrived after the altercation, but he had no physical contact with Ms. Carter. Ms. Johnson did not record the incident on her cell phone nor was she aware of any one else that may have recorded the incident.

Principal Officer Statement: Officer Kristian Marzette stated she responded to the Burger King to assist other cars in locating a guardian of a found child. When she arrived, Officer Ollie was already on the scene. She and Officer Ollie had been on the scene approximately two hours when Ms. Carter and another individual arrived. Officer Marzette stated she went outside and calmly asked Ms. Carter if she knew the child inside the Burger King. Ms. Carter stated 'yes' and Officer Marzette calmly asked her to exit the car. ISB investigators asked Officer Marzette if the situation regarding the child was overly upsetting to her; her response was, "No."

At that point, she and Ms. Carter began walking towards the door. and Ms. Carter attempted to walk ahead of Officer Marzette. Officer Marzette extended her right arm to touch Ms. Carter's left shoulder in an attempt to slow her down. Officer Marzette wanted to explain to her the situation. Officer Marzette inadvertently got her finger caught between the ball of Ms. Carter's ponytail and neck area, causing Ms. Carter's wig to become detached from her head. Officer Marzette acknowledged she did not give Ms. Carter any verbal commands to stop. She only said, "Hey! Hey!" She then grabbed Ms. Carter to get her attention. Officer Chaney was standing approximately three to four feet behind her when she reached for Ms. Carter's shoulder.

Shortly thereafter, she and Ms. Carter entered the building. Officer Marzette recalled Ms. Carter stating, "Don't you put your hands on me! I'm going to whoop your mother fucking ass!" Officer Marzette stated she looked at Ms. Carter and 'walked off.' As Officer Marzette walked away, she could hear Ms. Carter yelling at her. Officer Marzette turned around and Ms. Carter was pointed her finger in her face.

Officer Marzette advised she walked away again as Ms. Carter continued to yell at her. Officer Marzette turned around a third time and observed Ms. Carter attempting to strike her. Officer Marzette then defended herself by striking Ms. Carter. Officer Marzette could not recall how many times or what parts of Ms. Carter's body she struck.

Officer Marzette stated that Ms. Carter was unable to strike her because Officers French and Ollie were holding Ms. Carter from advancing. Officer Chaney then grabbed Officer Marzette to defuse the altercation. Officer Marzette advised she did not strike Ms. Carter while Ms. Carter was being restrained.

Officer Marzette stated as officers were escorting Ms. Carter outside, she heard Ms. Carter state, "If I had the gun I would shoot you." Officer Marzette recanted her statement saying, "They must have had a gun in the car, or on the scene, or something. I heard her say something about a gun." Officer Marzette acknowledged that the altercation only involved her and Ms. Carter and that no other officers were involved in the altercation.

Major Debbie Jackson, the Duty Major, made the scene and advised Sgt. Young to have a Misdemeanor Citation issued to Ms. Carter. Officer Marzette defended her actions and stated she did not overreact to the incident.

Witness Officer Statement: Sergeant Lorenzo Young stated he was initially called to the Burger King by officers who had located a three year old child wandering the streets without parental supervision. He spoke with Officer Ollie over the phone prior to his arrival, but was not aware an altercation involving Officer Marzette or anyone else had occurred. Upon his arrival, he spoke with the officers and began searching for the child's parent. Officers Ollie, Chaney, French, Parker, and Marzette remained on the scene.

As Sgt. Young was returning to the restaurant a 'disturbance call' was dispatched to the Burger King. The dispatcher soon advised the situation was under control. Sgt. Young arrived at the location and Ms. Carter and Mr. Austin were standing next to their car. Ms. Carter was agitated and advised Sgt. Young that Officer Marzette had pulled her hair and had struck her.

Sgt. Young then spoke with Officer Chaney who advised him that Ms. Carter and Officer Marzette had gotten into a physical altercation and he (Officer Chaney) felt that Officer Marzette was in the wrong. He explained that when Ms. Carter initially arrived, she and Officer Marzette got into a verbal altercation in the parking lot. They entered the restaurant and continued to exchange words at which time he observed Officer Marzette strike Ms. Carter.

Officer Marzette advised Sgt. Young that she initially tugged at Ms. Carter's hair as she and Ms. Carter were entering the restaurant. Officer Marzette attempted to explain to Sgt. Young why she had pulled Ms. Carter's hair, but was unable to articulate why. She explained she didn't know why she pulled Ms. Carter's hair, only that she, "just tugged it." According to Sgt. Young, Ms. Carter 'lashed out' after Officer Marzette pulled her hair.

Officer Marzette stated that after a "heated" verbal exchange, Ms. Carter raised her hands in an aggressive and threatening manner. Officer Marzette advised him she struck Ms. Carter because she perceived Ms. Carter's actions as an immediate threat. Ms. Carter was physically restrained by the other officers and was unable to throw any punches.

Ms. Carter admitted to Sgt. Young that she did raise her hand and point her finger at Officer Marzette before Officer Marzette struck her. Sgt. Young asked Officer Marzette why she had pulled Ms. Carter's hair. Officer Marzette had no response.

Scene officers advised him that Ms. Carter had no physical contact with Officer Marzette. Officers Ollie and Parker also felt that Officer Marzette's actions is what led to the physical encounter.

Sgt. Young spoke with several employees who advised they witnessed the altercation. They did not witness what occurred outside and they were unaware of what led to the altercation. None of the employees recorded the incident on their cell phone. Sgt. Young checked for possible store surveillance, but was advised by a manager that the equipment was inoperable.

Major Debbie Jackson made the scene after being advised of the incident. No parties were injured and Sgt. Young completed an Incident Report. Per Major Jackson, Ms. Carter was issued a misdemeanor citation for 'Disorderly Conduct' in lieu of a physical arrest. The Investigational Services Bureau was also notified.

Witness Officer Statement: Officer Jaboa Ollie stated she received a 'Missing Child' call to the Burger King located at 4266 Elvis Presley Boulevard. Upon arriving on the scene, Officer Ollie located a three year old child that had been found wandering across Elvis Presley Boulevard. Officers Chaney and Marzette arrived shortly thereafter.

Ariana Carter, the child's sister, arrived on the scene accompanied by her boyfriend, Stefone Austin. Officer Marzette quickly exited the restaurant followed by Officer Chaney. Officer Marzette was emotionally agitated due to the nature of the call.

Once outside, Officer Marzette approached Ms. Carter's vehicle. Although Officer Ollie had an unobstructed view of the parking lot from where she was sitting, she was not focusing on the interactions between the officers and Ms. Carter and could not hear what was being said.

Ms. Carter and Officer Marzette entered the lobby and a verbal altercation ensued. Ms. Carter told Officer Marzette, "But why did you touch me? Why did you put your hands on me?" Officer Marzette did not respond and walked away. Ms. Carter was extremely belligerent and was 'looking for blood.' By this time Mr. Austin entered the lobby and attempted to calm Ms. Carter.

As Officer Marzette walked away, Ms. Carter followed her. Ms. Carter pointed her arm and finger at Officer Marzette. They were approximately three feet from each other. Ms. Carter continued to curse and point at Officer Marzette to the extent that Mr. Austin took physical control of Ms. Carter in order to restrain her from advancing towards Officer Marzette.

Officer Ollie also attempted to calm Ms. Carter. Officer Ollie stood between Officer Marzette and Ms. Carter with her backed turned to Officer Marzette. Ms. Carter raised her arm in an aggressive manner, and made a motion in the direction of Officer Marzette. Officer Ollie blocked Ms. Carter's strike. Officer Ollie observed Officer Marzette's arms coming from behind her going in the direction of Ms. Carter. Officer Marzette and Ms. Carter started swinging at each other and a physical fight ensued. Officer French and Mr. Austin also stepped in and intervened.

Officer Ollie observed Officer Marzette strike Ms. Carter in the shoulder and face approximately four times. She described Officer Marzette's swinging motions as 'from the hip' and not as a 'boxing motion.' Ms. Carter was unable to strike Officer Marzette because Ms. Carter was being restrained by her boyfriend and other officers.

Officer Chaney was able to physically restrain Officer Marzette, however, Ms. Carter continued acting irate by beating on the tables. Ms. Carter was sent outside to 'cool off.'

Officer Ollie called for a supervisor and Sgt. Young and Major Jackson arrived on the scene. Officer Marzette was instructed to sit in her squad car while Major Jackson and Sgt. Young gathered information.

The restaurant manager provided officers with contact information. The information was forwarded to Major Jackson. The surveillance cameras inside the restaurant were not working properly and Officer Ollie was unaware of any cell phone recordings of the incident. Per Major Jackson, Ms. Carter was issued a misdemeanor citation for 'disorderly conduct' and released.

After the incident was over, Officer Chaney advised Officer Ollie that Officer Marzette was 'out of control.' Officer Ollie acknowledged that Officer Marzette's actions were 'out of control' and she and Officer Chaney both knew they would have to explain the incident to a supervisor.

Officer Ollie also spoke with Ms. Carter after the incident. Ms. Carter advised her that the altercation started as soon as she and Mr. Austin arrived on the scene. Officer Marzette met Ms. Carter on the passenger side of the car, opened the door, and told her go inside. As she exited the car, Officer Marzette pulled her hair which initiated the altercation.

Officer Ollie also spoke with Officer Marzette and asked her what had happened. Officer Marzette stated, "I shouldn't have went out there like that. I kind of fucked up." Officer Marzette denied pulling Ms. Carter's hair. Officer Marzette did say, "The girl had a wig on and my hands touched her wig, and she (Ms. Carter) 'went off.'"

Witness Officer Statement: Officer Jackie Parker stated he went to the Burger King to assist his partner, Officer Ollie, regarding an unattended child. When he arrived, Officers Chaney, Marzette, and Ollie were already on the scene inside the business. The child was also inside, and no next of kin had arrived to claim the child. Officer Parker left the scene with Sgt. Young and attempted to locate a next of kin.

Officer Parker located the child's mother and returned to the Burger King. He observed Officers French and Ollie outside in the parking lot speaking with other relatives. Officer Marzette was inside. Officer Chaney advised him that an altercation had ensued and Officer Marzette had "assaulted" Ms. Carter. He could not recall the specific details given by Officer Chaney, but Officer Chaney stated Officer Marzette assaulted Ms. Carter with her fists and that Officer Marzette had initiated the assault.

Officer Parker did not speak with any civilian witnesses and he was unaware if anyone had recorded the incident on their cell phone. He spoke with Officer Marzette who advised him when Ms. Carter arrived on the scene she approached Ms. Carter at her car. She advised Ms. Carter to get out of the car at which time Officer Marzette made some type of movement towards Ms. Carter's head. Officer Parker later stated he believed Officer Marzette told him that she had pulled Ms. Carter's hair.

Officer Marzette stated once she and Ms. Carter entered the restaurant Ms. Carter approached her in an aggressive manner and pointed her finger at her. Officer Marzette told him it was at this time that she struck Ms. Carter.

ISB investigators asked Officer Parker if Officer Marzette explained to him why she had pulled Ms. Carter's hair or made a movement towards her head. He replied that Officer Marzette told him that she was upset over the incident, having a three year old outside and left alone, and that she herself was a parent. Officer Parker advised that Officer Marzette explained to him that she had overreacted and allowed her personal feelings and emotions to be involved. She stated she struck Ms. Carter only after Ms. Carter attempted to strike her.

Witness Officer Statement: Officer Matthew Chaney stated he responded to a call at the Burger King located at 4266 Elvis Presley Boulevard to assist other officers in locating a missing child. When he arrived, Officer Ollie and Marzette were already on the scene with the child. He was inside the restaurant and observed Ariana Carter arrive in the parking lot. Officer Marzette walked outside and he followed.

Ms. Carter exited her vehicle very irate and there was a conflict or altercation between her and Officer Marzette. He did not know what initiated the altercation. As Ms. Carter exited her car, he observed Officer Marzette reach over and grab Ms. Carter's hair. Ms. Carter was wearing wig which he observed fall to the ground. He attempted to separate the two women. He pulled Officer Marzette into the restaurant to defuse the situation. Other officers grabbed Ms. Carter as she entered the restaurant. He stated that Officer Marzette appeared to be the primary aggressor.

Ms. Carter became more irate and words were exchanged between her and Officer Marzette. He heard Ms. Carter say, "I'm going to kill that bitch. When I see you out on the streets without your badge, I'm going to whoop you." As both parties were being restrained, Ms. Carter broke away from the officers and lunged towards him and Officer Marzette. Officer Marzette responded by lunging back and striking Ms. Carter.

Officer Marzette could not explain why she pulled Ms. Carter's hair. Officer Chaney advised there was no reason for Officer Marzette to pull her hair. He recalled Ms. Carter saying, "She was wrong for putting her hands on me." He did not recall any words or comments made to Ms. Carter by Officer Marzette, only that there was a lot of yelling and screaming between the two.

Sgt. Young arrived on the scene and Officer Chaney advised Sgt. Young of what he observed. Neither party was injured nor were any video recordings of the incident located.

Witness Officer Statement: Officer Wayne French stated he received a dispatched call to the Burger King regarding a child that was located wandering in the area. When he arrived on the scene, Officers Chaney, Ollie, and Marzette were already inside. Officer French observed Ms. Carter forcefully push the door open and enter the restaurant.

Concerned of her demeanor, Officer French followed her inside. He did not observe any interaction between Officer Marzette and Ms. Carter outside of the restaurant.

Once inside, Officer French heard Ms. Carter excitedly utter, "Why in the fuck did you put your fucking hands on me? I'm going to fucking kill you!" Officer Marzette was also upset and angry, replied, "Well, you left a two year old to wander off by itself." At that moment Officer Marzette and Ms. Carter began to fight; both swinging at each other. He attempted place Ms. Carter in handcuffs. He placed one arm behind Ms. Carter's right arm and his other arm above her chest area. Both he and Mr. Austin were restraining Ms. Carter. At this time, Officer Marzette began striking Ms. Carter in the face. Officers Chaney and Ollie attempted to restrain Officer Marzette. Officer French stated Ms. Carter appeared to be the primary aggressor.

Officer French was standing directly behind Ms. Carter, observed her raise her arms and point toward Officer Marzette in an aggressive manner. He also observed a lot of "swinging," particularly from Officer Marzette. Officer Marzette initiated the first strike. Officer French stated, "She (Officer Marzette) definitely threw several closed fists; right-hand punches." Her punches struck Ms. Carter in the face approximately five to six times. Officer French was standing approximately two feet from Ms. Carter and approximately three to four feet from Officer Marzette.

Officer French was unaware of any witnesses or video recordings of the incident. Sgt. Young arrived on the scene after the incident occurred. He was not a witness to the incident. Officer French stated Officer Ollie advised him that Officer Marzette's actions were "uncalled for" and that Officer Marzette was irate and was first to punch Ms. Carter. Officer Chaney advised Officer French that he was worried about Officer Marzette's actions because she was still on her probationary period.

B) Physical Evidence:

None

C) Forensic Evidence:

None

D) Recorded Evidence:

- 1) CD's Containing Civilian and Officer Statements
- 2) CD Containing Communications Audio Recordings
- 3) Typed and Signed Civilian and Witness Statements
- 4) Communications Event Chronology #P160652425
- 5) Offense Report #1603002981ME
- 6) Misdemeanor Citation #762934-Ariana Carter
- 7) Response to Resistance Form
- 8) Incident Report

9) Associated Emails

E) Miscellaneous Evidence:

None

VII) AG Review:

This case file was not submitted to the Attorney General's Office for review.

VIII) Analysis:

The result of this investigation shows that Officer Kristian Marzette did use physical force against Ariana Carter during a routine call for service. The force used occurred during a heated verbal altercation between Officer Marzette and Ms. Carter regarding the welfare of a child.

The investigation revealed that Officer Marzette allowed her personal emotions and judgement to influence her actions which escalated into a verbal and physical confrontation with Ms. Carter. Ms. Carter verbally threatened Officer Marzette with bodily harm and Officer Marzette responded with the use of physical force.

Officers Ollie, Chaney and French, along with Mr. Austin, acted swiftly to defuse the situation by restraining and separating both Officer Marzette and Ms. Carter. Furthermore, officer and civilian witness statements support that Officer Marzette's actions, although deemed not to be excessive, were unprovoked and unnecessary. Officer Marzette was described to be the primary aggressor.

On March 05, 2016, at approximately 8:00 p.m., officers responded to a call at the Burger King located at 4266 Elvis Presley Boulevard. A passerby located a three year old female walking alone across Elvis Presley Boulevard. Officers Ollie, Chaney, and Marzette arrived and went inside the restaurant to assist the child. Officer French later arrived and remained outside in his squad car. As time passed without a guardian's response, Officer Marzette became emotionally distressed that the child, in essence, had been neglected.

Approximately an hour and a half later, Ariana Carter and Stefone Austin, whom had been searching the area for the child, arrived on the scene. As Ms. Carter was exiting her vehicle, Officer Marzette exited the restaurant and confronted Ms. Carter. A verbal altercation ensued. Ms. Carter alleged Officer Marzette told her, "Get your ass out of the car and go inside and get your little sister."

In her statement to ISB investigators, Officer Marzette stated she was calm about the initial situation and denied being overly upset about the child's welfare. However, Officer Ollie stated Officer Marzette was visibly distraught that the child had been neglected, and hurriedly exited the restaurant to confront Ms. Carter.

Furthermore, Officer Chaney stated he witnessed the first contact and subsequent verbal altercation between Officer Marzette and Ms. Carter. Although he could not hear the content of the conversation, he stated the altercation became heated. As Ms. Carter slammed her car door and entered the restaurant, Officer Chaney witnessed Officer Marzette grab Ms. Carter by the back of her hair, causing her wig to come unattached from her head. Officer Chaney acknowledged there was no legitimate reason for Officer Marzette's actions, and Officer Marzette could not explain her actions to him.

Officer Marzette advised ISB investigators she was calm when she exited the restaurant and asked Ms. Carter to exit her car. However, Officers Ollie and Chaney contradicted Officer Marzette's statement saying she was upset and bothered by the initial situation and exited the restaurant with a sense of urgency to confront the arriving party.

Once Officer Marzette approached the car, Ms. Carter acknowledged she was not very receptive to Officer Marzette's attitude. She ignored Officer Marzette and began to enter the restaurant. As Ms. Carter was approaching the door, Officer Marzette grabbed her by her hair. Ms. Carter was wearing a wig which became detached from her scalp. Officer Marzette denied she purposely pulled Ms. Carter by her hair. She stated she attempted to touch Ms. Carter on her left shoulder to get her attention and to slow her down, but inadvertently got her finger caught in Ms. Carter's ponytail. Officer Marzette acknowledged she had not given Ms. Carter any verbal commands to stop or comply.

Ms. Carter and Officer Marzette entered the restaurant. Officer Chaney felt it was necessary to follow Officer Marzette into the restaurant to defuse the situation and to calm her down. Officer French was also outside sitting in his squad car when he observed Ms. Carter forcefully push open the lobby door. Sensing her hostile behavior, he too felt it necessary to follow Ms. Carter inside.

Once inside, Ms. Carter acknowledged she festered over Officer Marzette's actions and became angrier by the thought of Officer Marzette pulling her hair (touching her). This escalated her own demeanor and actions and she admittedly became confrontational with Officer Marzette.

Ms. Carter stated she raised her arms with closed fists, pointed at Officer Marzette, and verbally threatened to kill her. Officer Marzette accused Ms. Carter of first advancing towards her in a threatening manner. Ms. Carter accused Officer Marzette of the same. Although Officer Marzette was being restrained by Officer Chaney, Officer Marzette was able to strike Ms. Carter in the face several times with her fist. Ms. Carter was unable to return or defend those strikes because she was being restrained by Officers Ollie, French, and Mr. Austin.

This investigation further revealed that Officer Marzette allowed her personal beliefs and emotions to cloud her judgement while answering a call for service of a child in need. Her failure to control her emotions led to her inability to properly perform her duties in an impartial manner which affected her actions.

The investigation also revealed that a dispute and physical altercation was initiated between Officer Marzette and Ms. Carter and no one else. The circumstances surrounding the call did not rise to a level that would justify the need for Officer Marzette to initiate any type of physical contact with Ms. Carter. However, as the confrontation escalated inside the restaurant, there were discrepancies and similarities as to who lunged towards whom first, or who attempted to strike whom first.

Ms. Carter acknowledged while within close proximity of Officer Marzette, she verbally and aggressively challenged her by raising her arms, closing her palms, and pointing at her. Furthermore, Ms. Carter admitted she threatened to kill Officer Marzette. Additionally, statements made by both civilian and officer witnesses corroborated that Officer Marzette and Ms. Carter were fighting each other, and that Officer Marzette exhibited to be the primary aggressor.

The result of this investigation shows that when Officer Marzette pulled Ms. Carter by her hair, this led to an escalated level of verbal and physical aggression between both parties which progressed into a physical fight. Responding officers, as well as a witness, swiftly intervened and restrained both parties to stop the incident from continuing.

However, based on the totality of the circumstances, the initial cause of the confrontation was precipitated by Officer Marzette's actions. Officer Marzette failed to fully assess the situation and allowed her personal feelings to be involved.

Officer Marzette perceived and articulated Ms. Carter's actions to be a threat to her safety. However, Ms. Carter's actions were only instigated by the initial unwarranted demeanor and physical contact of Officer Marzette. Ms. Carter festered on Officer Marzette's actions which escalated her own demeanor.

Although Ms. Carter's actions would not be considered appropriate or justified, her actions were emotionally responsive to the actions of Officer Marzette. Harsh and threatening words were exchanged, namely by Ms. Carter, which resulted in a spontaneous physical confrontation between herself and Officer Marzette. The confrontation was quickly defused and Ms. Carter was issued a Misdemeanor Citation for disorderly conduct.

The primary issue related to this investigation centers upon the actions of Officer Kristian Marzette and whether her actions transcend the standards of the Memphis Police Department. These standards are established in the Memphis Police Department's DR-301 Excessive Force/Unnecessary Force, which states:

The Memphis Police Department's DR 301 Excessive Force/Unnecessary Force states:

Excessive Force/Unnecessary is defined as the amount of force which is beyond the need and circumstances of the particular event, or which is not justified in the light of all

circumstances, as is the case of deadly force to protect property as contrasted with protecting life.

Control may be achieved through advice, warnings, and persuasion, or by the use of physical force. While the use of reasonable physical force may be necessary in situations which cannot be otherwise controlled, force may not be resorted to unless other reasonable alternatives have been exhausted or would clearly be ineffective under the particular circumstances. Officers should consider the facts and circumstances known at the time of the confrontation when determining the amount of force to use, including: the severity of the subject's crimes, the immediate threat posed by the subject to the safety of others, and whether the subject exhibits active aggression or is actively resisting arrest. Officers are permitted to use whatever force that is necessary and reasonable to protect others or themselves from bodily harm.

Officers shall never use force or violence that is unprovoked, needless, or not required during performance of their duties when making an arrest or in dealing with a prisoner or any person.

Graham v. Connor (US 1989) is the landmark US Supreme Court case that defines reasonable use of force by police officers in the line of duty. As such, this standard was applied in defining the Memphis Police Department's use of force policies, which are contained in the Memphis Police Department Policies and Procedures Manual, Chapter 2, Section 8, Response to Resistance, pages 1-11.

The ruling in **Graham V. Connor** holds that all claims that law enforcement officials had used excessive force --deadly or not-- in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen, are properly analyzed under the Fourth Amendment's "objective reasonableness" standard.

The "reasonableness" of a particular use of force must be judged from the perspective of a **reasonable officer on the scene**, rather than with the "20/20 vision of hindsight."

The test of reasonableness is **not capable of precise definition or mechanical application**. Its proper application requires careful attention to the facts and circumstances of each particular case, including:

1. The severity of the crime at issue;
2. Whether the suspect poses an immediate threat to the safety of the officers or others; and
3. Whether he/she is actively resisting arrest or attempting to evade arrest by flight.

This "objective reasonableness" standard was applied during the investigation of the 'Found Child Complaint' by **Officer Kristian Marzette at 4266 Elvis Presley Boulevard**. The three standards applied in **Graham v. Connor** were used to determine the reasonableness of the use of force applied by **Officer Kristian Marzette**, and revealed the following:

1. The crime at issue in this investigation is the fact that there was no crime committed.
2. Ariana Carter did pose an immediate threat to the safety of Officer Marzette by actively engaging Officer Marzette with her arms raised and fists closed. Furthermore, Ms. Carter verbally threatened to kill Officer Marzette. Ms.

Carter's aggressive actions of hostility towards Officer Marzette also posed an immediate threat to the safety of Officers Ollie, Chaney, and French, as well as other surrounding bystanders. Those officers were forced to use physical force to restrain Ms. Carter from inflicting bodily harm upon Officer Marzette and potentially others.

However, the actions of Ms. Carter more than likely would not have occurred if Officer Marzette had not pulled Ms. Carter's wig from her head. The action of Officer Marzette pulling Ms. Carter's hair was unprovoked and unwarranted. Officer Marzette's actions resulted in a defensive reaction by Ms. Carter.

3. By threatening the use of bodily force and threatening to kill Officer Marzette, Ariana Carter was an active threat to the officer.

Officer Marzette confronted Ms. Carter while not maintaining control of her emotions. Officer Marzette's action of pulling Ms. Carter's hair was unprovoked and unwarranted. Although Officer Marzette stated her action was unintentional, that one action alone precipitated unwarranted acts of aggression by both parties. The aggression culminated into a physical confrontation that had no relevance whatsoever to the dispatched call.

Witness officers, as well as civilian witnesses, concurred that Officer Marzette initiated the confrontation and described her actions as being out of control. Officer French was the only officer that described Officer Marzette as not being the primary aggressor. Ms. Carter appeared to have initiated the altercation inside the restaurant. At the moment Ms. Carter was restrained, Officer Marzette should have backed away.

Officer Marzette is required to have the stamina, intelligence, moral courage and emotional stability necessary to fairly and impartially deal with human beings in the many complicated and potentially explosive situations, which she encounters.

Officer Marzette is also required to maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others.

The public demands that the integrity of its law enforcement officers be above reproach. A member must scrupulously avoid any conduct, which might compromise the integrity of themselves, their fellow members or the Department.

A police officer is the most conspicuous representative of government, and to the majority of the people he or she is a symbol of stability and authority upon whom they can rely. An officer's conduct is closely scrutinized, and when his or her actions are found to be excessive, unwarranted or unjustified, he or she and the Department are criticized far more severely than comparable conduct of persons in other walks of life. Since the conduct of a member, on or off duty, does reflect directly upon the Department, members must at all times conduct themselves in a manner which does not bring discredit to themselves, the Department, or the City.

These actions place Officer Marzette in violation of DR 104 Personal Conduct, which states:

DR 104 PERSONAL CONDUCT

The Memphis Police Department's DR 104 Personal Conduct states:

The conduct of each member, both on and off-duty, is expected to be such that it will not reflect adversely on other members, the Department, the City of Memphis, or the law enforcement profession. This regulation applies to both the professional and private conduct of all members. It includes not only all unlawful acts by members but also acts which, although not unlawful in themselves, would violate either the Law Enforcement or Civilian Code of Ethics, and would degrade or bring disrespect upon the member or the Department.

IX) Conclusion:

Based on the facts of the case, the preponderance of evidence shows that, **Officer Kristian Marzette, IBM #13120, IS in violation of the stated allegation, DR-301 Excessive Force/Unnecessary Force. Therefore, the allegation is SUSTAINED.**

Based on the facts of the case, the preponderance of evidence shows that, **Officer Kristian Marzette, IBM #13120, IS in violation of the stated allegation, DR-104 Personal Conduct. Therefore, the allegation is SUSTAINED.**